No. 16374

United States Court of Appeals
For the Ninth Circuit

THE PACIFIC TOW BOAT COMPANY, a corporation; and E. W. STUCHELL, WILLIAM D. CARPENTER, HARRY W. STUCHELL, JR., M. A. WYMAN, D. E. WYMAN and M. H. WYMAN, Co-Partners Doing Business as Eclipse Lumber Co., *Appellants,*

vs.

STATES MARINE CORPORATION OF DELAWARE, a corporation, *Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF OF APPELLEE

SUMMERS, BUCEY & HOWARD
CHARLES B. HOWARD
T. F. PAUL
Proctors for Appellee.

340 Central Building,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

No. 16374

United States Court of Appeals
For the Ninth Circuit

THE PACIFIC TOW BOAT COMPANY, a corporation; and E. W. STUCHELL, WILLIAM D. CARPENTER, HARRY W. STUCHELL, JR., M. A. WYMAN, D. E. WYMAN and M. H. WYMAN, Co-Partners Doing Business as Eclipse Lumber Co., *Appellants,*

vs.

STATES MARINE CORPORATION OF DELAWARE, a corporation, *Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF OF APPELLEE

SUMMERS, BUCEY & HOWARD
CHARLES B. HOWARD
T. F. PAUL
Proctors for Appellee.

340 Central Building,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

INDEX

TABLE OF AUTHORITIES

Cases

Regulations

Page

Statutes

Texts

United States Court of Appeals
For the Ninth Circuit

THE PACIFIC TOW BOAT COMPANY, a corporation; and E. W. STUCHELL, WILLIAM D. CARPENTER, HARRY W. STUCHELL, JR., M. A. WYMAN, D. E. WYMAN and M. H. WYMAN, Co-Partners Doing Business as Eclipse Lumber Co., *Appellants,*	No. 16374
vs.	
STATES MARINE CORPORATION OF DELAWARE, a corporation, *Appellee.*	

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF OF APPELLEE

APPELLEE'S COUNTER-STATEMENT OF CASE

Since appellants' Statement of Case does not present to this Court all facts in evidence which are necessary to an understanding of the case, and to establish that the Findings of Fact are not "clearly erroneous," we set forth herewith a Counter-Statement of the Case and material facts pertinent thereto.

The steamer "COTTON STATE" arrived at and was moored port side to the Everett Port Dock at 1835 hours on January 10, 1957, bow in and with the stern about even with the outer end or face of the dock. In accordance with usual customary practices on turbine driven

vessels like the "COTTON STATE," the engineer on watch engaged a mechanism known as a jacking or turning gear as soon as the pilot and master were finished with the engines. This jacking or turning gear caused the shaft and propeller of the vessel to slowly turn at one complete revolution in every seven to eight minutes. The jacking gear was engaged at 1840 hours according to the ship's log records.

At about 1840 hours the tug "LEA MOE" came into the slip where the "COTTON STATE" was moored at the Port Dock. This tug was towing astern two heavily laden lumber barges, the barge No. 25 being the leading scow and the barge No. 15 being the trailing scow, and the two barges being coupled together with short manila coupling lines.

At 1840 hours, when the above operations were conducted, it was dark, official sunset at Everett having been at 4:29 P.M., equivalent to 1629 hours, or more than two hours before the time in question.

Signs warning tugs and other vessels of the propeller area and the danger to other craft were posted at the stern rail on the offshore side of the "COTTON STATE." There was an additional propeller warning board in place containing a flashing red light which was suspended by rope lines over the offshore stern area of the vessel to a point a few feet above the level of the water.

When the tug "LEA MOE" brought the two barges into the slip area before the accident she was displaying regulation towing and navigation lights but no lights

whatsoever were carried or burning on either barge No. 25 or barge No. 15.

There was no lookout or crew member aboard either barge No. 25 or barge No. 15 as the tug towed them into the slip along the offshore side of the moored steamer "COTTON STATE."

The master of the tug "LEA MOE" verbally and visually desginated and pointed out to members of the crew on duty on the deck of the steamer "COTTON STATE" the point on the vessel to which he desired to have a mooring line secured between the ship and the leading barge and this request or direction was complied with by those persons on the "COTTON STATE." This resulted in one mooring line being extended from a point on the offshore midship section of the "COTTON STATE" to the offshore or starboard forward corner stanchion of the barge No. 25. Thereafter the tug released its towing hawser from the forward end of barge No. 25 and started to maneuver itself back toward the trailing barge No. 15 for the purpose of shifting that barge to a position further forward alongside the forward hatches of the steamer "COTTON STATE."

Before the tug "LEA MOE" had completed the above maneuver barge No. 15 drifted or sagged down under the stern counter of the "COTTON STATE" and came in contact with the slowly revolving blades of the propeller while engaged in the jacking or turning gear. This caused the damage to the propeller for which appellee sought relief in this action and also the damage and loss to barge No. 15 and its lumber cargo for which appellant Eclipse Lumber Company, as owner of the barge

No. 15, sought recovery in this action against both appellant Pacific Tow Boat Company and appellee States Marine Corporation of Delaware.

ANALYSIS OF APPELLANTS' SPECIFICATION OF ERRORS

Specification of Errors No. 1 is a mixed question of fact ("ignored the evidence") and law ("contrary to legal principle") having to do with the presumption of fault against a moving vessel which strikes a stationary one.

Specification of Errors No. 2 involves only factual questions wherein appellants contend the personnel on the "COTTON STATE" were negligent or contributorily negligent and that the trial court improperly made a "Finding of Fact" to the contrary.

Specification of Errors No. 3 is purely a factual question wherein appellants contend that the finding of the trial court that the activities of the tug and its personnel caused the barge to drift into collision with the propeller of the "COTTON STATE" was "clearly erroneous."

By the Final Decree (Tr. 65) entered by the trial court in this cause appellee States Marine was awarded its full damages against both appellant Pacific and appellant Eclipse. Appellant Eclipse was denied recovery against appellee States Marine for the damage to barge No. 15 but was allowed a recovery of its damages against co-appellant Pacific, including any amounts which it might be obligated to pay to appellee, States Marine, under this Decree.

It will be noted that the same proctors represent appellant Pacific as owner of the tug "Lea Moe" and appellant Eclipse as owner of the barge No. 15 in this cause and that no appeal has been taken from the portion of the Final Decree awarding Eclipse its full damages against co-appellant Pacific. This portion of the decree therefore becomes the law of the case insofar as the damages claimed by Eclipse are concerned. Having been allowed a complete recovery of its damages against Pacific, from which no appeal has been taken by either Eclipse or Pacific, there is no basis at law for Eclipse to appeal at this time with respect to its liability to appellee States Marine, for which it is completely protected by the unappealed portion of the decree allowing it full recovery against Pacific.

ARGUMENT

I. Applicability of McAllister Rule

A. The Trial Court Findings Are Not "Clearly Erroneous"

Since *McAllister v. United States,* 348 U.S. 19, 75 S.Ct. 6, 99 L.Ed. 20, 1954 AMC 1999 was decided by the United States Supreme Court in 1954 all federal appellate courts in this country have consistently held that in admiralty cases they will not disturb the "Findings of Fact" of the District Court unless on a review of the entire evidence the Court of Appeals is left with the "definite and firm conviction that a mistake has been committed" and that such findings are "clearly erroneous."

This appellate court has on several recent occasions held that under the *McAllister* rule there can no longer be a trial *de novo* on an admiralty case appeal.

> *City of Long Beach v. American President Lines, Ltd.* (1955) 223 F.2d 853, 855; 1955 AMC 1548;
>
> *Albina Engine and Machine Works, Inc. v. American Mail Line, Ltd.* (1959) 263 F.2d 311, 314; 1959 AMC 417, 420;
>
> *U.S.A. v. Staples* (1958) 256 F.2d 290, 293; 1958 AMC 728, 733.

Appellee agrees with the proposition expressed on page 26 of appellants' brief that this appellate court must examine the record to determine if the ruling of the trial court was "clearly erroneous." *Titus v. SS* "Santorini" (CA 9—1958) 258 F.2d 352, 353; 1959 AMC 1042. However, once this Court has satisfied itself that the test of the *McAllister* rule has been met by reason of some evidence in the record to support the findings of the trial court, then that portion of the appeal which specifically relates to an attack on the Findings of Fact should be at an end. In this case such an approach should dispose of Specification of Errors Nos. 2 and 3 at the outset of the appeal, leaving only the one issue of law as to whether the trial court improperly applied the presumption of fault against a moving vessel which strikes a stationary one under Specification of Errors No. 1.

B. Answer to Appellants' Argument Re Reviewability of "Negligence" Findings

Appellants contend under Specification of Errors No. 2 and the corresponding section of their argument (Br. 5) that the trial court incorrectly made "Findings of Fact" with respect to negligence or lack of negligence of each of the parties. Appellants contend that such "Findings" are in reality "Conclusions of Law" which are not subject to the restrictions of the rule of the *McAllister* case, *supra,* and are therefore as freely reviewable as any other true conclusion of law. In support of their contention appellants cite only three cases from the Second Circuit, including two cases which were decided several years prior to the Supreme Court decision in *McAllister v. United States, supra.*

Whatever may have been, or may now be the treatment and characterization of negligence or contributory negligence in the Second Circuit as either "Findings of Fact" or "Conclusions of Law" the rule in this Ninth Circuit seems to be clearly established that negligence and contributory negligence are proper matters to be dealt with in the Findings of Fact by the trial court.

Amerocean Steamship Company v. Copp (1957) 245 F.2d 291, 1957 AMC 749 was an admiralty case tried before the same U.S. District Judge as the present case and in which the parties were represented by the same firms of attorneys as the proctors in the present case. The trial judge, Honorable Bowen, D.J., made Findings of Fact and Conclusions of Law regarding negligence which were considered and approved by this

Court on appeal. After quoting the exact language of the trial court as to certain joint acts of *negligence* on the part of two of the parties to the action, this Court in footnote No. 9 of the opinion condemned the very practice which appellants now suggest should be used and had this to say:

> "It is true this expression appears under the head of 'Conclusions of Law.' It is inartistic since *the whole sentence also contains a finding of fact. Proximate cause and joint and concurrent negligence are facts, not law.* Such questions in a proper case would be submitted to a jury. The unworkmanlike placing of the statement by counsel tendering the document does not render it less a finding of fact."
>
> *Amerocean Steamship Company v. Copp* (1957) 245 F.2d 291, 294; 1957 AMC 749. (Emphasis added)

In other recent admiralty cases this Court has similarly approved "Findings of Fact" regarding negligence of the parties or their representatives.

> *City of Long Beach v. American President Lines, supra;*
>
> *Albina Engine and Machine Works, Inc. v. American Mail Line, Ltd., supra.*

The Sixth Circuit has also approved of the practice of the trial court making "Findings of Fact" with respect to negligence and unseaworthiness.

> *Imperial Oil, Ltd. v. Drlik* (1956) 234 F.2d 4, 1956 AMC 1862.

II. Applicability of the Pennsylvania Rule

In cases involving marine collisions it has long been the rule in this country that if one vessel has violated a statutory duty as to navigation it must prove that such violation not only did not but could not have contributed to cause the accident.

> *The Pennsylvania* (1873) 19 Wall. (86 U.S.) 125.

This rule has been consistently followed in the Court of Appeals for the Ninth Circuit with respect to situations involving lack of proper navigation lights on vessels, including barges or scows.

> *N.A. Dredging Co. v. Cutler* (1908) 162 Fed. 457, 459;
>
> *Port of Portland v. U.S.* (1910) 176 Fed. 866;
>
> *Olympic-Magna* (1932) 59 F.2d 697, 1932 AMC 1032, 1036.

The U.S. Supreme Court recently held that the rule as to absolute liability for violation of a statutory duty or regulation as to lights on a scow was applicable, even in a seaman's death case involving an explosion, although the statute or regulation violated was intended to prevent collisions rather than to prevent explosions.

> *Kernan, Admx. v. American Dredging Company* (1958) 355 U.S. 426, 2 L.Ed.2d 382, 78 S.Ct. 394, 1958 AMC 251.

There should be no question as to the applicability of the *Pennsylvania* rule in this case since it has been held applicable even where there has not been a "collision" in the true maritime sense of the term, such as

an action involving contact between a barge in tow of a tug and an "ice breaker" fender structure installed to protect a bridge abutment.

> *Merritt-Chapman and Scott v. Cornell SS Co.* (CA 2—1959) 265 F.2d 537, 1959 AMC 1099.

In the present case the trial court found in Finding of Fact 16(b) that appellants' tug and barge did not have in place and burning the navigation lights required by existing law and regulation (Tr. 60), although the evidence showed that the tow of the barge into the slip alongside the "COTTON STATE" took place more than two hours after the official hour of sunset and when it was dark (Finding 11, Tr. 57). See also testimony of tug master and deckhands as to absence of any lights on barges and as to the condition of darkness prevailing at the time (Tr. 485, 529, 554).

Statutory requirements with respect to lights on barges at the location and time in question are contained in Title 33 U.S. Code §157 and regulations promulgated thereunder. 33 C.F.R. §80.16 (a) and (h) require a white light to be shown at each end of each scow at a distance of not less than eight feet from the water level when being towed on any harbor, river or other inland water of the United States between hours of sunset and sunrise. 33 C.F.R. §80.02 and §80.14. Sunset at Everett on the day in question was at 4:29 P.M. or 1629 hours, more than two hours before the occurrence of the incidents in question (Tr. 186).

The trial judge expressly held in his Oral Opinion that appellants had failed to show

> "that the absence of such barge lights did not cause the accident and resulting injury and damage to the vessel's propeller nor that such failure to have such barge lights in use could not have caused or contributed proximately to cause such injury and damages." (Tr. 584)

This was incorporated into Finding of Fact No. 17 (Tr. 60-61).

In effect, appellants concede the accuracy of the Findings as to no lights on either barge, but argue that the absence of such lights on the barges could not possibly have contributed to cause the accident and damage in this case (Br. 14-15). This argument must fail in view of the testimony of the chief mate of the vessel that he was not informed as to the length of the barges or the length of the tow and that he was unable to determine that the point to which the master of the tug proposed to secure the forward mooring line from the vessel to the barge would not allow sufficient room for the barge No. 15 to lay safely alongside of the "Cotton State" until appellants' tug was able to take it in separate tow for the purpose of delivering it to the desired position along the offshore side adjacent to one of the forward hatches of the vessel (Tr. 132, 142).

III. Presumption of Fault Against Moving Tug and Barge

A. Applicability of Rule

In maritime collision cases the admiralty courts

apply the rule that when a moving vessel strikes a moored or stationary vessel there is a presumption of fault against the moving vessel. Griffin on Collision, Sec. 25, p. 41. Such an accident has even been said to be "conclusive evidence" that the moving vessel was at fault. *The Granite State* (1866) 3 Wall. 310, 18 L.Ed. 179.

This Court has previously applied this presumption against a moving vessel to a case similar to the present case involving movement of barges by a tug in a slip which resulted in damage to a vessel moored at a pier. *Sehlmeyer v. Romeo Co.* (CA 9—1941) 117 F.2d 996, 1941 AMC 563. Cf. *The Marian* (CA 9—1933) 66 F.2d 354, 356, 1933 AMC 1329, involving collision of a tug with an anchored drill barge, and other cases on this same point cited therein.

B. Appellants' Authorities Not Applicable

The cases cited by appellants in their brief (p. 9) recognize the applicability of this presumption to situations as in the present case involving damage to vessels moored at piers when struck by "drifting" or moving vessels. *The Buffalo—The President* (CA 2—1932) 56 F.2d 738, 1932 AMC 444; *Burns Bros. v. Long Island R. Co.* (CA 2—1949) 176 F.2d 406, 1949 AMC 1697.

Other cases cited on this point by appellants are clearly distinguishable. Thus, in *U.S.A. v. Seas Shipping Co.* (EDNY—1950) 92 F.Supp. 902, 1950 AMC 1081 the court expressly found that adequate notice of the turning of the ship's propeller had not been given to either the stevedoring company unloading the barge

or to the bargee on duty on the barge, a finding as to lack of warning quite different than the finding of the trial judge in the present case (Finding No. 7, Tr. 56).

Likewise, in *Rusted v. Nicaragua Mail Steam Nav. Co.* (SDNY—1893) 56 Fed. 1022 the court found that the master of a vessel anchored in an open roadstead ordered lines to a barge moored alongside to be cast loose before a tug was able to secure its hawser to the barge to tow it away.

Contrary to the statement in appellants' brief (p. 9) the court in *The Hektor* (D. Md.) 1935 AMC 336 did not impose liability on a ship for damage to a barge moored alongside which was caused by the slow turning of the propeller while warming up the engines, nor did the court find the vessel at fault for improper control of barge mooring lines. The condensed report of the case states:

> "The Court further found that the ship was not negligent in failing to post a lookout at the stern."

A direct quotation of the opinion of the Court states:

> "The ship, I think, was entirely within her rights, therefor, in starting the propeller."
>
> *The Hektor* (D. Md.) 1935 AMC 336, 337.

C. Answer to Appellants' Argument

1. *Substitution of Line.* Appellants contend that the attachment of a barge mooring line supplied by the "Cotton State" to one of the forward stanchions on the leading scow, and the removal by the deckhand of the tug of the tug's towing hawser from the same stan-

chion, should be treated with great significance (Br. 9-11).

We fail to comprehend the importance of this point, and the trial court apparently did not regard it as significant. It is the usual and standard procedure at Everett and all West Coast U.S. ports for the vessel to furnish mooring lines for barges brought alongside (Tr. 122, 414). The master of appellants' tug acknowledged this to be true (Tr. 482).

2. *Participation by Crew of* "Cotton State." Appellants next argue that since one end of the one barge mooring line in use was being handled by members of the crew, it should be regarded as specially significant (Br. 11). We can only state the contrary of this proposition, namely, that *failure* of the ship's crew to assist in securing the barges alongside the vessel might have been the basis for proving some fault against appellee. Since the tug was still in control, and in the process of delivering the barges alongside the vessel (Tr. 500, 502) and since the manner and location for securing the first and only barge mooring line in use was directed entirely by the tug master and the deckhand from the tug on the leading barge (Tr. 141, 203) we fail to see how this point can be of any assistance to appellants.

3. *Claim that Scows Were Safe and at Rest.* These terms as used in appellants' brief (p. 11) not only are wholly unsupported by the evidence but are clearly contrary to the evidence and the factual findings of the trial court.

The tug master admitted in his testimony that the point where he secured barge No. 25 was only "temporarily" and that he *had not* completed delivery of the barges to the "COTTON STATE" (Tr. 499, 502). Also, that he intended to move the barges to other points alongside the vessel (Tr. 500, 502).

Furthermore, the tug master testified unequivocally that he used his own judgment in determining where to land the barges alongside the vessel, that "I judged it would be plenty of clearance" from the stern and propeller and that he did not rely upon any advices or reports from those aboard the "COTTON STATE" (Tr. 492, 493, 494).

In the light of such testimony from appellants' own tug master and subsequent events of the accident, how can it be suggested by appellants' proctors that these scows were "safe" and "at rest"?

4. *Explanation for Collision.* Appellants suggest in this section of their brief (pp. 12-13) that the one mooring line at the forward end of the leading barge must have slipped and that this allowed the barges to drift aft alongside the "COTTON STATE" so that the No. 15 got under the stern counter and in contact with the propeller. There is no evidence whatsoever in the record that this occurred and the quotation of testimony of the chief mate upon which appellants largely rely is based entirely upon an *assumption* that was never established (Tr. 179).

IV. The "*Cotton State*" Was Not Negligent

This refers to Specification of Errors No. 2 of appellants' brief under which they consider in detail certain of the evidence (Br. 13-24).

Contrary to appellants' contention, the crew members on the deck of the "COTTON STATE" were not "able to see everything" (Br. 13). Both the chief mate and the boatswain testified that they could not see the stern or after end of the tow (Tr. 132, 205-6). The deckhand who was available on the aft deck of the vessel also stated that "it was dark when we finished. It was so dark we couldn't see" (Tr. 217).

The importance of the lack of regulation lights on the barges can be appreciated from an examination of the entire testimony of chief mate McLaughlin, boatswain Dusevoir and deckhand Fulmer, particularly at the pages cited above.

Secondly, it should be borne in mind that the barges were *not yet* in the control of the "COTTON STATE." Only one mooring line had been extended between the leading barge No. 25 and the ship. There was absolutely no line or attachment between the barge No. 15 and the "COTTON STATE" at the time of the accident or in fact, at any time before or after the accident.

Appellants argue that the engine and propeller were engaged in the turning or jacking gear without checking on deck as to whether the propeller and stern area were clear (Br. 18-21). At the outset we can point out that the master of appellants' tug was aware of the fact that turbine driven vessels such as the "COTTON STATE"

would slowly rotate their propellers in jacking gear after arriving in port, for the purpose of evenly cooling the turbine rotors (Tr. 501).

Although the master of the tug refused to admit that he saw the flashing red warning light and propeller warning signs at the stern of the "COTTON STATE" (Tr. 448) there was an overwhelming amount of positive and affirmative testimony from several other witnesses that these warnings were in place and that the red light was flashing (Tr. 209, 226, 322). This was certainly ample warning of the danger of accident and damage from a barge being allowed to come in under the stern counter of the vessel.

Appellants suggest that the "COTTON STATE" should have had a lookout at the stern and quote testimony of the chief engineer and night engineer in an effort to substantiate the point (Br. 20). However, the chief engineer carefully distinguished between the situation requiring warmup of engines in jacking gear when a vessel prepares to leave a dock and the present situation where the jacking or turning gear is engaged immediately after arrival at a port to cool off the turbine and rotors (Tr. 264, 302-3).

The appellants' contention regarding necessity for a lookout at the stern of the vessel was not proved by any evidence of statutory requirement, custom or usage. In *Robin v. U.S.* (SDNY) 1958 AMC 451 the Court expressly refused to accept a similar contention in the same type of a situation, stating as follows:

"I do not think that the vessel had any duty to

> maintain a lookout, notwithstanding the danger that exists with the propeller turning over."
>
> *Robin v. U.S.* (SDNY) 1958 AMC 451, 453.

Exactly the same finding as to lack of necessity for a stern lookout was made in *The Cape Friendship* (D. Md.) 1951 AMC 814.

In *Kosnac v. The Norcuba* (CA 2—1957) 243 F.2d 890, 1957 AMC 1219 a vessel which had been at anchor started to move out before a small launch which was alongside had moved away from the vessel. The master and pilot of the vessel had verbally warned all small boats of the intention to move the ship. The trial court held both the launch and the ship at fault. The Court of Appeals for the Second Circuit reversed, dismissing the libel of the launch, and holding that the ship was not at fault. It stated:

> "The judge below held that if someone had actually looked over the side, the 'Octyn's plight could have been seen,' and the collision averted.
>
> "In the circumstances here, the Norcuba had no duty to do more than give the warning which it did sufficiently in advance of getting under way.* * *
>
> "The warning having been given when the Octyn's captain thereafter heard the anchor being lifted, and heard and saw the movement of the propellers of the Norcuba for ten minutes prior to the accident, he had full knowledge of the dangers attendant in attempting to maintain his position."
>
> *Kosnac v. The Norcuba* (CA 2—1957) 243 F. 2d 890, 891, 1957 AMC 1219.

Answering appellants' Specification of Errors No. 3 we submit that there is ample evidence in the record to support the Findings of Fact as to the negligence of the tug in allowing barge No. 15 to drift under the stern counter and against the propeller of the vessel.

The tug had not completed its job of delivering these barges alongside the "COTTON STATE." Whatever may have been the cause of the drifting of the barge, there is no proof that those on the "COTTON STATE" were responsible for this action.

CONCLUSION

Therefore, the presumption against appellants as the moving vessels, and the rule of *The Pennsylvania* as to burden of proving that statutory violations due to lack of any lights on either barge did not and *could not* have contributed to cause the accident remain in the case.

We respectfully submit that the Findings of Fact of the trial court are not "clearly erroneous" and that the Conclusions of Law correctly apply the legal principles which should control in this case. The Final Decree in favor of States Marine should be affirmed in all respects.

Respectfully submitted,

SUMMERS, BUCEY & HOWARD
CHARLES B. HOWARD
T. F. PAUL
Proctors for Appellee.